Hovsepian v. Apple, Inc. Doc. 250

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ECHOSTAR SATELLITE LLC AND
ECHOSTAR TECHNOLOGIES CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

In re ACACIA MEDIA TECHNOLOGIES CORPORATION	Case No. 05-CV-1114 JW **DECLARATION OF DAVID M. HYMAS IN SUPPORT OF ROUNDS 1& 2 DEFENDANTS' OPPOSITION TO ACACIA'S MOTION FOR RECONSIDERATION** Date: August 17, 2007 Time: 9:00 a.m. Courtroom: 8, 4th Floor Judge: Hon. James Ware

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I, DAVID M. HYMAS, declare and state:

1. I am an associate at Morrison & Foerster LLP, counsel of record for defendants EchoStar Satellite LLC and EchoStar Technologies Corporation in this case. Unless otherwise stated, I have personal knowledge of the matters stated below and, if called as a witness to testify, could and would do so. I make this declaration in support of the "Rounds 1 & 2 Defendants' Opposition To Acacia's Motion For Reconsideration."

2. Attached hereto as Exhibit A is a true and correct copy of "Plaintiff Acacia Media Technologies Corporation's Claim Construction Brief," which Acacia filed on January 8, 2004.

3. Attached hereto as Exhibit B is a true and correct copy of this Court's Markman Order dated July 12, 2004 ("*Markman* I"), and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.*, No. 02 1040 (C.D. Cal.).

4. Attached hereto as Exhibit C is a true and correct copy of "Plaintiff Acacia Media Technologies Corporation's Memorandum Of Points And Authorities In Support Of Its Motion For Reconsideration And Clarification Of The July 12, 2004 Markman Order," which Acacia filed on July 29, 2005.

5. Attached hereto as Exhibit D is a true and correct copy of this Court's *Markman* Order dated December 7, 2005 ("*Markman* II"), and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.*, No. 05-1114 (N.D. Cal.).

6. Attached hereto as Exhibit E is a true and correct copy of the "Transfer Order" from the Judicial Panel on Multidistrict Litigation, which was filed in this case on February 23, 2006.

7. Attached hereto as Exhibit F is a true and correct copy of "Plaintiff Acacia Media Technologies Corporation's Proposed Definitions And Citations To Intrinsic Record For Claim Terms From The '863 And '720 Patents And Terms From The '992 Patent That The Court Has Already Construed," which Acacia served on May 26, 2006.

8. Attached hereto as Exhibit G is a true and correct copy of "Plaintiff Acacia Media Technologies Corporation's Legal Memorandum Re The Definitions Of Claim Terms From The

'863 And '720 Patents And Terms From The '992 Patent That The Court Has Already Construed," which Acacia filed on July 21, 2006.

9. Attached hereto as Exhibit H is a true and correct copy of "Plaintiff Acacia Media Technologies Corporation's Combined Reply In Support Of Its Legal Memorandum Re The Definitions Of Claim Terms From The '863 And '720 Patents And Terms From The '992 Patent That The Court Has Already Construed," which Acacia filed on August 25, 2006.

10. Attached hereto as Exhibit I is a true and correct copy of this Court's *Markman* Order dated December 14, 2006 ("*Markman* III"), and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.*, No. 05-1114 (N.D. Cal.).

11. Attached hereto as Exhibit J is a true and correct copy of "Plaintiff Acacia Media Technologies Corporation's Combined Opposition To: (1) Claim Construction Brief Of AEBN, Inc.; Ademia Multimedia, LLC; Audio Communications, Inc.; Game Link, Inc.; Innovative Ideas International; Lightspeed Media Group, Inc.; New Destiny Internet Group, Inc.; VS Media, Inc. And (2) Claim Construction Brief Of IWI And Offendale," which Acacia filed on January 22, 2004.

12. Attached hereto as Exhibit K is a true and correct copy of Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* § 4:1 (5th ed. 2006).

13. Attached hereto as Exhibit L is a true and correct copy of this Court's *Markman* Order dated March 2, 2007 ("*Markman* IV"), and filed in *Acacia Media Technologies Corp. v. New Destiny Internet Group, Inc., et al.*, No. 05-1114 (N.D. Cal.).

14. I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on July 18, 2007, in San Francisco, California.

David M. Hymas